

**BANKSTON GRONNING O'HARA, P.C.**  
Attorneys at Law  
601 W. 5<sup>th</sup> Avenue, Suite 900  
Anchorage, Alaska 99501  
Tel. (907) 276-1711 - Fax (907) 279-5358  
www.bankston.to

Jon T. Givens, Esq.  
Bankston Gronning O'Hara, P.C.  
601 West 5th Avenue, Suite 900  
Anchorage, Alaska 99501  
(907) 276-1711 (telephone)  
(907) 279-5358 (fax)  
wbankston@bankston.to

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA  
AT ANCHORAGE

ALASKA RENT-A-CAR, INC.,	)	
an Alaska Corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CENDANT CORPORATION, et al.,	)	
	)	
Defendants.	)	Case No. 3:03-cv-29 [TMB]
	)	

**[PROPOSED] OPPOSITION TO DEFENDANTS'**  
**MOTION FOR CLARIFICATION**

Defendants made no effort to contact plaintiff's counsel prior to filing docket 305. Plaintiff's counsel apologizes to this Court that it yet again has another motion filed by the defendants (docket 305) on a matter which should be resolved by the defendants communicating and cooperating with plaintiff rather than seeking Court intervention. However, this motion by the defendants, just like their recent motion accusing plaintiff's counsel of unethical conduct (docket 296), and defendants recent motion for sanctions accusing plaintiff's counsel of dishonesty (docket 302), is simply the defendants' continuing defamation and smear campaign on the eve of oral argument. This case has

**BANKSTON GRONNING O'HARA, P.C.**  
 Attorneys at Law  
 601 W. 5<sup>th</sup> Avenue, Suite 900  
 Anchorage, Alaska 99501  
 Tel. (907) 276-1711 - Fax (907) 279-5358  
 www.bankston.to

been pending for over four years and needs to be decided on its merits not on some sideshow issues concocted by the defendants' counsel.

Defendants counsel represents at docket 305 "Defendants' counsel worked with plaintiff's counsel for several days to prepare a responsive pleading." This is false. Plaintiff's counsel on December 19, 2006, the day docket 297 was issued, requested defendants to provide their input so the joint memorandum could be filed early.<sup>1</sup> On January 3, 2007 having heard nothing from defendants' counsel for 16 days, plaintiff requested their input by January 4, 2007 such that a joint memorandum could be filed on January 4, 2007.<sup>2</sup> Defendant's only response was one January 4, 2007 email.<sup>3</sup> It was not until around noon and 2:00 p.m. on January 5, 2007 that defendants' counsel provided any edits or text for the joint memorandum.<sup>4</sup> Defendant's counsel did not cooperate "for several days" but waited until the last minute to provide input.

Defendants statement at docket 305, that docket 300 "had never been shown to defendant's counsel" is also misleading as the defendants were provided a draft but then disappeared from approximately 4:00 p.m. to 5:00 p.m. at the filing deadline.<sup>5</sup>

Plaintiff's counsel filed a Joint Memorandum on January 5, 2007, by the 5:00 p.m. close of business of the Court's offices and the plaintiff's counsel's offices.<sup>6</sup> By that time, the memorandum which in fact was jointly authored by both the plaintiff and the defendants had incorporated all appropriate edits and comments provided by the defendants, and plaintiff's counsel believed it had authority to file the joint memorandum. Once the defendants objected, after the filing, to labeling the filing a "joint" memorandum, plaintiff's counsel filed an errata.<sup>7</sup>

On January 5, 2007, plaintiff's counsel sent at least three emails to the defendants asking them if there was anything they desired to be changed in the joint memorandum,

<sup>1</sup> Docket 307, Exhibit 6, December 19, 2006 email.

<sup>2</sup> Docket 307, Exhibit 8, January 3, 2007 email.

<sup>3</sup> Docket 307, Exhibit 7, January 4, 2007 email.

<sup>4</sup> Docket 307, Exhibit 1 January 5, 2007 email and Exhibit 2, January 5, 2007 email.

<sup>5</sup> Docket 307, at pp. 6-7 and Exhibit 12, January 5, 2007 email.

<sup>6</sup> Docket 300.

<sup>7</sup> Docket 304.

**BANKSTON GRONNING O'HARA, P.C.**  
Attorneys at Law  
601 W. 5<sup>th</sup> Avenue, Suite 900  
Anchorage, Alaska 99501  
Tel. (907) 276-1711 - Fax (907) 279-5358  
www.bankston.to

and defendants never responded. Subsequently, on January 16 and 18, 2007 and February 1, 2007, plaintiff's counsel again wrote the defendants to inquire if they would like to file an errata regarding the memorandum filed in response to Docket 297.<sup>8</sup> To date, approximately one month after the January 5, 2007 filing, the defendants have still never identified anything which should be filed in an errata, and defendants have refused to cooperate with plaintiff to prepare a further errata.

The defendants refused to cooperate timely with the plaintiff in drafting the joint memorandum originally and have subsequently refused to cooperate with the plaintiff to file an errata to correct any perceived defect in docket 300. Their request for further guidance in their motion for clarification as to whether they should cooperate with the plaintiff at this time, is as ironic as it is insincere.

DATED this 5th day of February, 2007.

BANKSTON GRONNING O'HARA, PC  
Attorneys for Plaintiff Alaska Rent-A-Car, Inc.

By: s/Jon T. Givens  
601 W. 5th Avenue, Suite 900  
Anchorage, Alaska 99501  
Phone: (907) 276-1711 Fax: (907) 279-5358  
E-mail: jgivens@bankston.to  
AK Bar #9011072

#### **CERTIFICATE OF SERVICE**

I hereby certify that on February 5, 2007 a copy of foregoing Opposition To Defendants' Motion For Clarification was served electronically on Diane F. Vallentine, John F. Dienelt and Barry M. Heller

s/Jon T. Givens

<sup>8</sup> Docket 307, Exhibit 4, January 16, 2007 email; January 17, 2007 letter, and January 18, 2007 email. *See* Exhibit 1.